EXHIBIT A

FINAL TERM SHEET

WHEREAS, the plaintiffs have filed suit in the United States District Court for the District of New Hampshire in *Frye v. Gardner*, 20-cv-00751-SM (D.N.H., filed July 7, 2020), under the Title II of the American with Disabilities Act of 1990 ("ADA") and Section 504 of the Rehabilitation Act of 1973 alleging that certain elements of the defendants' absentee registration and voting program violate those statutes.

WHEREAS, the defendants previously issued guidance that any voter may request an absentee ballot for the September 8, 2020 state primary and November 3, 2020 general elections based on concerns regarding COVID-19.

WHEREAS, the COVID-19 pandemic is likely to result in an increase in absentee voting for the 2020 election cycle among New Hampshire voters, including those who are blind or have other Print Disabilities.

WHEREAS, the COVID-19 pandemic has placed a significant burden on the defendants and their ability to prepare for and ensure a successful 2020 election cycle and that the term "best efforts," as used herein, must be understood in this unprecedented and difficult context.

WHEREAS, the defendants have been, and continue to be, engaged in efforts to address as many of the issues presented in the plaintiffs' Motion for Preliminary Injunction as possible in advance of the September 8, 2020 state primary.

WHEREAS, in order to resolve the issues presented in the plaintiffs' Motion for Preliminary Injunction, the defendants necessarily must rely on third-party vendors and/or consultants to make their forms, guidance, and website accessible and to implement ballot delivery and voter-side marking; and accordingly, the defendants cannot guarantee that these vendors will timely perform, fail to perform, or will not otherwise encounter problems that hinder their ability to perform these tasks in advance of the September 8, 2020 state primary.

WHEREAS, the defendants will continue to use their best efforts to address as many of these issues as possible in advance of the September 8, 2020 state primary.

WHEREAS, the parties wish to ensure that the defendants can use best efforts and devote as many resources as possible to address as many of these issues as possible in advance of the September 8, 2020 state primary.

WHEREAS, neither this term sheet nor the performance of any act contemplated hereby shall be construed as an admission of or concession to any of the parties' positions, claims, or defenses in this case.

WHEREAS, the purpose of this term sheet is to proceed towards a resolution of the plaintiffs' Motion for Preliminary Injunction.

To that end, the plaintiffs and the defendants agree to the following terms:

I. DEFINITIONS

1. The following terms shall have the following meanings with respect to this Term Sheet. All other terms shall be interpreted according to their plain and ordinary meaning.

2. “Absentee Voting Program” includes: (i) the provision of information about New Hampshire elections to voters; (ii) absentee voter registration; and (iii) the processes for New Hampshire voters to request, receive, mark, and submit absentee ballots.

3. “Accessible,” as it pertains to the defendants’ Absentee Voting Program, means allowing voters with Print Disabilities to register and vote absentee privately and independently, with the same convenience and ease of access as other voters; provided that the defendants’ shall not be required to take any action that they can show constitutes an undue burden or fundamental alteration, as those terms are used in 28 C.F.R. § 35.164.

4. Unless otherwise provided in this Term Sheet, technical terms used in this Term Sheet have the same meaning as provided in the Web Content Accessibility Guidelines (“WCAG”) 2.0 Level AA Success criteria published by the World Wide Web Consortium (“W3C”), available at www.w3.org/TR/WCAG.

5. “Conformance” and “conform” have the same meaning as used in WCAG 2.0.

6. “Print Disabilities” are disabilities that interfere with the effective reading, writing, or use of printed material. This definition includes persons who are visually impaired, those with learning disabilities that interfere with the effective reading, writing, or use of printed material, as well those with a physical disability that interferes with holding and manipulating paper or a pen or pencil.

7. “Remote Accessible Vote-By-Mail” (RAVBM) system means a program or system that allows individuals who are blind or have other Print Disabilities to participate in absentee voting privately and independently without relying on others to assist them and with ease of access similar to the experience of nondisabled voters. This system will not include the electronic return of a marked absentee ballot.

II. TERMS

8. The defendants will modify their Absentee Voting Program in a manner that makes it Accessible to persons who are blind or have other Print Disabilities and implement that process in advance of the September 8, 2020 state primary. This process will not include the electronic return of a marked absentee ballot.

   a. The defendants shall implement the VotingWorks RAVBM system they have acquired pursuant to the Contract For Accessible Vote-by-Mail Client-side

Ballot Marking Tool To Enhance Accessibility #NHSOS-2020-003 (August 14, 2020) for the September 8, 2020 primary election and the November 3, 2020 general election. The defendants shall make the VotingWorks RAVBM system available for voters with Print Disabilities on or before August 28, 2020.

b. To verify that the VotingWorks RAVBM is installed and operational for use by voters prior to the September 8, 2020 primary election, the defendants will provide an opportunity for the plaintiffs to test the VotingWorks RAVBM system to which New Hampshire citizens will have access in the manner it will be available to the voter to verify that it is accessible to and usable by voters with Print Disabilities.

9. The defendants will make certain electronically available information that is part of the Absentee Voting Program—certain website pages, certain guidance related to the Absentee Voting Program, and certain forms related to the Absentee Voting Program—accessible to persons who are blind or have other Print Disabilities in advance of the September 8, 2020 state primary and to maintain it in Accessible formats. The defendants will make all necessary forms for registering to vote, requesting an absentee ballot and marking and returning an absentee ballot, and all related guidance and instruction documents in a format that is Accessible to and fillable by those with Print Disabilities in Conformance with WCAG 2.0 on or before August 28, 2020. The defendants shall accept electronic signatures on such documents as need to be signed and so inform voters. Those forms and guidance documents necessary to obtain an electronic ballot through the RAVBM system will be made available in Accessible formats on the Secretary of State's website.

10. The defendants will notify and provide guidance to local election officials about the VotingWorks RAVBM system and to accept and tabulate all ballots properly completed and submitted that are received by 5:00 p.m. on the day of the election, including any necessary training regarding accepting the signatures of blind and other Print Disabled voters.

11. Within three business days of the last signature on this Term Sheet, the defendants will publicize the availability of the Accessible Absentee Voting Program, including the VotingWorks RAVBM system, and any guidance related necessary to obtain an electronic ballot through the RAVBM system, on its website and in a press release.

12. For voters who apply and are eligible to use the VotingWorks RAVBM system to receive and mark their ballots, the defendants shall mail them the identical materials sent to all other absentee voters except as provided in this Paragraph. The instructions provided to voters who apply and are eligible to use the VotingWorks RAVBM system will be specific to the use of that system. The defendants will provide to voters with Print Disabilities an Accessible affidavit in lieu of the affidavit printed on the inner envelope. Voters with Print Disabilities may type their name in the appropriate space on the Accessible affidavit or sign the Accessible Affidavit and either form (or both forms) of signature will be accepted by election officials. The instructions provided to voters electronically for using the remote accessible absentee voting system will include directions on returning marked ballots, including signing the Accessible Affidavit. The

defendants will inform local election officials that it is best practice during September 8, 2020 state primary and November 3, 2020 general election to partially process absentee ballots prior to the election, as temporarily authorized under RSA 659:55-a (2020). The defendants will inform local election officials that, while not explicitly required by law, it is also best practice to attempt to notify any absentee voter whose ballot has been rejected for any reason, including voters who submit absentee ballots that were received and marked through the VotingWorks RAVBM system. The defendants will encourage local election officials to be prepared to explain to any voter whose ballot has been rejected what opportunity exists, if any, to cure the defect that caused the rejection and how and where the voter may correct the defect.

13. Plaintiffs' counsel and defense counsel will continue to have discussions on at least a weekly basis regarding the defendants' progress on the items contained in Paragraphs 8 through 12 and will collaborate together, in good faith, to help ensure that the defendants are able to make the Absentee Voting Program as Accessible as possible before the September 8, 2020, state primary to persons who are blind or have other Print Disabilities. The defendants shall respond to the plaintiffs' reasonable requests for information regarding the progress of their efforts.

14. The plaintiffs will withdraw the current motion for a preliminary injunction filed in *Frye v. Gardner*, 20-cv-00751-SM (D.N.H.), without prejudice to their right to refile a motion for preliminary injunction at a later date.

15. This term sheet shall be made an exhibit to the motion to withdraw contained in Paragraph 14, and the motion to withdraw shall specify that this term sheet will be fully enforceable by the United States District Court for the District of New Hampshire in *Frye v. Gardner*, 20-cv-00751-SM (D.N.H.), against either party, during the 2020 election cycle.

William M. Gardner, Secretary of State, and the
New Hampshire Department of State

By their attorney,

GORDON J. MACDONALD
ATTORNEY GENERAL

Dated: August 28, 2020

/s/ Anthony J. Galdieri

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Dated: August 28, 2020

By their Attorneys,

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